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Comprehensive review of the whole question of peacekeeping operations in all their aspects

Ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations

Note by the Secretary-General*

Pursuant to resolution 59/300, in which the General Assembly endorsed the proposals, recommendations and conclusions contained in the report of the Special Committee on Peacekeeping Operations on its 2005 resumed session (A/59/19/Rev.1, part two, chap. II, para. 40 (a)), the Secretary-General has the honour to transmit herewith the report of the Group of Legal Experts on recommendations to ensure that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, in accordance with due process. The Special Committee on Peacekeeping Operations also requested (A/59/19/Rev.1, part two, chap. II, paras. 40 (b) and (c)), that the Group of Legal Experts: provide advice on whether, and if so how, the standards contained in Secretary-General's Bulletin (ST/SGB/2003/13) could bind contingent members in the period prior to the conclusion of a memorandum of understanding or other agreement or action by a troop-contributing country that incorporates those standards in a legally effective way under its national law; and study and propose ways of standardizing the norms of conduct applicable to all categories of peacekeeping personnel, paying particular attention to the issue of sexual exploitation and abuse. To that end, a second group of experts will be constituted and their report forwarded in due course.

* The document was delayed owing to additional technical and substantive consultations.

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Report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations

Summary

The report of the Adviser to the Secretary-General on sexual exploitation and abuse by United Nations peacekeeping personnel (A/59/710) provided an analysis of the problem of sexual exploitation and abuse by United Nations peacekeeping personnel and noted that holding United Nations staff and experts on mission accountable for crimes committed during peacekeeping operations was problematic. Further consideration of the issue was required and it was therefore recommended that a group of legal experts be appointed to undertake the task.

The Group of Legal Experts (see annex I) carried out its work, in accordance with its terms of reference (see annex II), in the period from October to December 2005, resumed working in late February and completed its work in March 2006.

The Group has made a number of recommendations that are designed to overcome the obstacles that exist in holding United Nations peacekeeping personnel accountable for crimes committed during peacekeeping operations.

The Group recommends that priority be given by the United Nations to facilitating the exercise of jurisdiction by the host State. The United Nations should not readily assume that the host State is unable to exercise jurisdiction merely because a peacekeeping operation is carried out in a post-conflict area.

If the host State is unable, even with United Nations assistance, to exercise all aspects of criminal jurisdiction, there will be a need to rely on other States to do so. However, even in these circumstances, the host State may be able to provide some assistance to enable the exercise of criminal jurisdiction by another State, including by gathering evidence or arresting alleged offenders. Jurisdiction is not an indivisible concept and the host State and other States may be involved in different but mutually supportive aspects of the overall exercise of criminal jurisdiction.

The exercise of jurisdiction by States other than the host State presents many challenges that are not unique to the peacekeeping environment. These include the extradition of persons and securing admissible evidence for use in another jurisdiction.

To provide a sound legal basis for the exercise of jurisdiction by States other than the host State, the Group recommends the development of a new international convention to address jurisdiction and related issues.

Administrative investigations conducted by the United Nations for disciplinary purposes may be relevant to holding a person criminally accountable as they may be the only means of gathering evidence of the alleged crime. United Nations administrative investigators therefore need to be cognizant of the fact that the material they collect may be used to support not only disciplinary action but also criminal proceedings.

The Group makes a number of recommendations designed to ensure that administrative investigations are carried out to the highest possible standard.

The Group acknowledges the steps the United Nations has taken to ensure that departments adopt a cooperative and coordinated approach to dealing with misconduct issues, but there need to be clearer guidelines about the role of the Office of Internal Oversight Services and its relationship with other departments, in particular the Department of Peacekeeping Operations, and peacekeeping missions.

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I. Introduction

> *... if the rule of law means anything at all, it means that no one, including peacekeepers, is above the law.*[1]

1. The Special Committee on Peacekeeping Operations, having considered the report of the Adviser to the Secretary-General on sexual exploitation and abuse by United Nations peacekeeping personnel (A/59/710) (hereafter the "Zeid report"), made a number of recommendations in its report (A/59/19/Rev.1), including that the Secretary-General appoint a group of legal experts to prepare a report providing advice on the best way to proceed so as to ensure that the original intent of the Charter of the United Nations could be achieved, namely that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, in accordance with due process.

2. The General Assembly endorsed the recommendations of the Special Committee and, pursuant to resolution 59/300, the Secretary-General established a group of legal experts to consider the issue.

3. During the course of its work, the Group consulted with officials of the Department of Peacekeeping Operations, the Office of Human Resources Management, the Office of Internal Oversight Services, the Office of Legal Affairs, the United Nations Organization Mission in the Democratic Republic of the Congo and the United Nations Stabilization Mission in Haiti. The Group also met with officials of the United Nations Children's Fund and the United Nations Development Programme. The Group thanks the officials for their willingness to provide it with information and their views, and to share their technical knowledge and experiences.

4. Meetings were also held with the Adviser to the Secretary-General on sexual exploitation and abuse by United Nations peacekeeping personnel, Prince Zeid Ra'ad Zeid Al-Hussein; the Under-Secretary-General for Legal Affairs and the Legal Counsel; the then Assistant Secretary-General, Office of the Legal Counsel, the Assistant Secretary-General for Peacekeeping Operations; and the then Assistant Secretary-General for General Assembly and Conference Management. The Group appreciates the time that those individuals made available for the Group and their support. The Group also met with the Special Committee on Peacekeeping Operations and appreciates the time the Special Committee took to meet with the Group.

5. The Group wishes to acknowledge the invaluable assistance provided by the Department of Peacekeeping Operations and the Office of Legal Affairs.

6. Finally, the Group is grateful for the professional assistance and support provided by the administrative officer for the Group.

[1] Report of the Secretary-General to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616, para. 33).

Observations on the mandate of the Group of Legal Experts

7. The mandate of the Group of Legal Experts refers to the criminal accountability of officials of the United Nations and experts performing missions for the United Nations (see annex II). The Group understands "officials of the United Nations" to include United Nations staff and United Nations Volunteers,[2] and "experts performing missions" to include United Nations police, military observers, military advisers, military liaison officers and consultants. The term "peacekeeping personnel" is used in the present report to refer to such persons.[3]

8. The mandate refers to "accountability for criminal acts" and the recommendations therefore are not limited to crimes involving sexual exploitation and abuse.

9. The Group adopted a broad approach to criminal accountability so that it considered the bases for the exercise of criminal jurisdiction in national and international law and the investigatory procedures that might trigger the exercise of that jurisdiction.

10. Acts of sexual exploitation and abuse, as defined in Secretary-General's Bulletin ST/SGB/2003/13, amount to misconduct that should be the subject of an administrative investigation; however, such acts will not necessarily amount to criminal conduct under the laws of a State.

11. The Group understands the reference to the accountability of personnel "during assignment on peacekeeping missions" to mean that the recommendations in its report should be applicable to all persons assigned to a peacekeeping operation, irrespective of the department or separately administered organ or programme from which they are assigned. There are, however many other United Nations personnel who are not assigned to the peacekeeping operation but are nevertheless working in the mission area. Their actions are just as likely to affect the credibility and image of the Organization and consideration should therefore be given to applying the Group's recommendations to them.

II. Accountability: criminal conduct and misconduct

12. Sexual exploitation and abuse in United Nations peacekeeping operations is not a recent phenomenon. While official records are incomplete, there is sufficient documentary and anecdotal evidence to indicate that, over the past decades, there have been many instances of personnel engaging in such conduct, including liaising with adult prostitutes, demanding sexual favours in return for food or employment, sexual assault, rape and paedophilia.

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[2] United Nations Volunteers are assimilated as staff under the status-of-forces agreements in peacekeeping operations.

[3] As the Group was not mandated to consider the accountability of members of military contingents, references to "peacekeeping personnel" do not include references to members of military contingents. The Group was also not mandated to consider the possible vicarious liability of the United Nations as an employer or any possible liability of Member States.

13. While the United Nations has implemented a number of preventative measures to address sexual exploitation and abuse,[4] a comprehensive response to this problem also requires that peacekeeping personnel are held criminally accountable when their acts involve criminal conduct.

14. Where there is a functioning legal system in the host State, a crime will be investigated and prosecuted in accordance with the laws, practices and procedures of that State. In the absence of a functioning legal system in the host State, holding a person accountable for alleged criminal conduct may be affected by a number of factors.[5]

A. Codes of conduct

15. The United Nations administrative investigation, which may be the only investigation into such conduct, will only be initiated after the applicable code of conduct has been identified and the conduct assessed as amounting to an alleged breach of that code (see A/59/710, annex).

B. Identifying criminal conduct

16. There is a need to identify a State that may be able to exercise jurisdiction over the alleged offender and to assess whether the conduct may amount to criminal conduct under the laws of that State. The assessment ordinarily involves a consideration of the law of the State in which the conduct occurred because that is where the crime will be dealt with. However, where there is a dysfunctional legal system, merely determining that the conduct is a crime under the law of the host State may not result in the person being held criminally accountable for his or her conduct.

17. Secretary-General's Bulletin ST/SGB/2003/13 defines misconduct in the form of sexual exploitation and sexual abuse in very broad terms. It is not the role of the Bulletin to identify when that misconduct might amount to criminal conduct. However, the absence of information regarding when misconduct may constitute a crime may contribute to a lack of appreciation by peacekeeping personnel that they can be prosecuted for such conduct in the host State. They may also fail to appreciate that they might be prosecuted in States other than the host State if the misconduct amounts to a crime in those other States.

18. **The Group recommends that the predeployment awareness training and in-mission induction training of peacekeeping personnel include a warning that misconduct may amount to criminal conduct in either the host State or another State.**

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[4] Letter dated 9 February 2005 from the Secretary-General addressed to the President of the Security Council (S/2005/79); and press release on the United Nations establishing peacekeeping conduct and discipline units (PKO/120, dated 3 August 2005).

[5] The following discussion is in addition to such factors as who conducts the investigation, what type of investigation is conducted and whether a State other than the host State may exercise jurisdiction, which are discussed in the remainder of the present report. Some of these issues were identified in the Zeid report (A/59/710, paras. 84-90).

C. Differences in the criminal laws of Member States

19. There are variations in the national laws of States in relation to what constitutes criminal conduct and there are no internationally accepted definitions for each crime. For example, there are national differences in the definition of rape and other violent sexual crimes and the age by which a child is able to consent to a sexual act.

D. Immunities[6]

20. Officials and experts on mission for the United Nations enjoy immunity from the exercise of national criminal jurisdiction for acts performed in the exercise of their official functions.[7]

21. Many cases of criminal conduct, especially criminal acts of sexual exploitation and abuse, would not, however, be in the performance of functions and immunity would not apply. Notwithstanding, this does not necessarily mean that the person will be exposed to a criminal prosecution in the host State.

22. Where there is a dysfunctional legal system in the host State, it may not be in the interests of the United Nations to agree (under the status-of-forces agreement) to the host State instituting criminal proceedings or to waive immunity or certify the absence of immunity where the host State requests the United Nations to do so. In these circumstances, a person's immunity appears to give him or her impunity at least vis-à-vis the host State.[8]

E. Dual criminality

23. The requirement by a prosecuting State for dual criminality may have an impact on whether a person is held criminally accountable for his or her conduct. For example, a State may extend the application of its laws to cover conduct in another State, but may only exercise jurisdiction in relation to that conduct if the conduct also constitutes a crime where it was committed (that is, there was dual criminality). A number of States also have dual criminality as a prerequisite for rendering extradition and mutual legal assistance in criminal matters. The difficulties with respect to dual criminality can be mitigated by encouraging States to review, or to adopt a liberal interpretation of, their requirements and to cooperate with each other to the maximum possible extent in the investigation and prosecution

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[6] This factor is relevant to the exercise of jurisdiction by both the host State and another State.

[7] Resolution 22 A (I), article V, section 18 (a) and article VI, section 22 (b).

[8] The discussion on immunities relates to peacekeeping personnel other than those who are part of national military contingents and who are subject to the exclusive jurisdiction of their sending State. The Group notes that there are ongoing discussions about the status of formed police units in a peacekeeping operation. The members of such units are currently classified as experts on mission and therefore benefit from functional immunity. Should their legal status under governing instruments change so that they are said to fall under the exclusive jurisdiction of their sending State, it is essential that these instruments contain provisions to ensure that the sending State is obliged to extend and enforce its laws over the criminal conduct of those persons.

of serious crimes committed by peacekeeping personnel, in particular those involving sexual exploitation and abuse.[9]

F. Securing custody of the alleged offender

24. Most States will not proceed with a prosecution in the absence of the alleged offender (A/59/710, para. 86). When an alleged offender is not in the State seeking to exercise jurisdiction over him or her, there will usually be a need to rely on extradition to secure custody of that person.

25. The difficulties with extradition are not unique to the peacekeeping environment, regardless of whether the alleged offender remains in the host State or is in another State. However, when the alleged offender remains in the host State and the host State's legal system is dysfunctional, the problem of securing custody of the alleged offender may be exacerbated. In these circumstances, as part of the rule-of-law mandate of the peacekeeping operation, it may be possible for the United Nations to assist the host State to rehabilitate its relevant authorities that are involved in the extradition process, at least in relation to serious crimes.

G. Accountability of persons other than the primary offender

26. It is often not only the person who commits the primary offence who should be held accountable for his or her conduct. There are cases where another person, be it a manager, peer or subordinate, engages in conduct that may amount to a crime that is ancillary to the primary offence, such as by destroying evidence of the primary offence. **In these circumstances, the Group recommends that the other person should also be investigated and, where applicable, held criminally accountable for that conduct.**

III. Jurisdiction of the host State

27. The Group considers that as far as is possible, the host State should exercise jurisdiction over crimes committed by peacekeeping personnel in its territory for the following reasons:

(a) The host State is the State on whose territory the crime was committed and there is little doubt that it may establish jurisdiction over conduct within its territory. This is regardless of the identity of the alleged offender or of the victim, or whether another State can exercise jurisdiction over the same conduct;

(b) The host State is likely to be the place where most of the witnesses and evidence are located. Holding criminal trials in the host State will therefore avoid

[9] A recent example is the request by the Council of Europe for member States to consider the possibility of establishing jurisdiction over offences of sexual exploitation of children, including in cases where the facts are not punishable under the law of the State where they are committed, in particular on account of the age of the victim (see Committee of Ministers recommendation Rec (2001) 16 (31 October 2001)). The European Committee on Crime Problems considered that jurisdiction based on the nationality of the offender and of the victim would not provide adequate protection where cases of sexual exploitation of children are not punished under the law of the State where they have been committed (see CM(2001)131, addendum IV revised).

the cost, delays and inconvenience of witnesses having to travel overseas or of evidence having to be transmitted abroad;

(c) Holding an alleged offender criminally accountable in the host State flows from the obligation of United Nations peacekeeping personnel to respect all local laws and regulations as a corollary to their enjoyment of privileges and immunities in the host State;

(d) Holding trials in the host State will give the local population a greater sense of justice being done and being seen as being done. This is important in demonstrating the commitment of the United Nations to the rule of law.

28. The Group notes that some of these considerations are similar to those that have been cited in the Zeid report in support of its recommendation to hold on-site courts martial for members of military contingents (A/59/710, para. 35).

A. Ad hoc arrangements

29. The Group understands that there have been instances where United Nations personnel have been subject to the exercise of criminal jurisdiction by the host State of a peacekeeping operation and have had their immunities waived for this purpose. This has occurred even in host States whose legal systems are perceived as dysfunctional. In these cases, the waiver of immunity may be subject to ad hoc arrangements being made by the United Nations to ensure that the interests of the alleged offender are protected.

30. It is noted in the Zeid report (A/59/710, para. 18) that one possibility for dealing with peacekeeping personnel who commit crimes is to try to get the host State to agree to United Nations assistance to ensure that criminal proceedings against United Nations personnel satisfy international human rights standards. The report goes on to state that the difficulty with this course of action is that it would be seen as instituting two standards of treatment: one for local inhabitants and one for international officials. While the Group recognizes that this is a valid concern, it is of the view that the perception of double standards should not automatically rule out any particular course of action. Members of military contingents are already subject to a separate system of justice and some accountability may often be better than none for the victims.

B. Executive mandates

31. A peacekeeping mission may be given an executive mandate so that it exercises governmental powers in the host State. This enables the United Nations, as the administering authority, to create a legal system that complies with rule-of-law requirements. In these situations, the host State will be the State asserting jurisdiction over serious crimes committed by peacekeeping personnel. In addition, as the United Nations has established a system with respect for human rights as one component, the Secretary-General should have less difficulty waiving any applicable immunity for this purpose.

32. It is unlikely, however, that a typical peacekeeping mission will have an executive mandate. Most host States are unlikely to agree to confer such executive powers on the United Nations, and peacekeeping operations with executive

mandates are so resource-intensive that they are unlikely to materialize except in special circumstances.

C. Hybrid tribunals

33. The United Nations can facilitate the exercise of jurisdiction by the host State through the establishment of hybrid tribunals. This may be done pursuant to an executive mandate in peacekeeping operations or pursuant to an agreement with the host State. These tribunals are usually part of the domestic legal system (that is, they are national courts) with investigatory, prosecutorial, judicial and custodial components. There can be international elements in one or more of these components. Examples of such hybrid tribunals are the Special Court for Sierra Leone, the Extraordinary Chambers established in Cambodia to try senior leaders of Democratic Kampuchea and the Special Panels for serious crimes established by the United Nations Transitional Administration in East Timor to try serious criminal offences in Timor-Leste.

34. Although a primary objective in creating these hybrid tribunals was to deal with international crimes committed on the territory of the relevant State, jurisdiction over such crimes is not a prerequisite to the establishment of hybrid tribunals. In principle, this means that hybrid tribunals can be established to deal exclusively with domestic crimes, including those committed by peacekeeping personnel, which do not rise to the level of international crimes.[10]

35. The establishment of hybrid tribunals has two advantages. First, the involvement of the international community in these tribunals gives a higher level of confidence that the legal processes in these institutions will meet relevant international human rights standards. Second, there should be no risk of applying different standards for peacekeeping personnel and for the local population of the host State if these tribunals are established to deal with the crimes regardless of the status of the alleged offender.

36. There are two significant limiting factors to the use of hybrid tribunals. First, apart from the rare cases where a peacekeeping operation has an executive mandate, the establishment of such a tribunal must be with the consent of the host State. The extent to which a host State will agree to such matters as the tribunal's jurisdiction, composition and procedures will therefore differ from one peacekeeping operation to another.

37. The second limiting factor is that the establishment of such hybrid tribunals is a resource-intensive exercise.[11]

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[10] In practice, however, because they are established in post-conflict situations, such tribunals are likely to also have jurisdiction over international crimes.

[11] The Extraordinary Chambers in the courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea, for example, have been projected to require some $57 million for the initial three years; see the report of the Secretary-General on the Khmer Rouge trials (A/59/432, para. 45).

D. Capacity-building

38. Many peacekeeping operations include a rule-of-law component providing for the establishment or re-establishment of the investigatory, prosecutorial, adjudicatory or custodial institutions of the host State. Such capacity-building may enable the host State to exercise jurisdiction over all persons, including peacekeeping personnel, in accordance with international standards for human rights and due process.[12]

39. The problem, however, is that in many cases, full capacity-building of the legal system can only be achieved in the long term. A long-term solution is therefore not sufficient to deal with serious crimes committed by peacekeeping personnel in the short to medium term. Consideration should nevertheless be given to whether reviving part of the host State's legal system (for example, in a particular region or only in relation to serious crimes against the person) is all that is needed in the short term to enable it to deal satisfactorily with peacekeeping personnel who commit serious crimes.

E. Shared exercise of jurisdiction by the host State and other States

40. There will be situations where the host State's legal system is unable to exercise criminal jurisdiction to a satisfactory level in the short term, with or without international assistance or capacity-building. Jurisdiction, however, is not an indivisible concept. It encompasses various activities ranging from investigations to adjudication to the detention of persons. Two or more States can be involved in exercising different but mutually supportive aspects of criminal jurisdiction consistent with the underlying principle that the greater the capacity of a host State to exercise criminal jurisdiction, the smaller the part which needs to be played by other States.[13]

41. For example, the host State's authorities may be able to carry out the investigation and prosecution of offenders satisfactorily but its custodial institutions may be inadequate for imprisonment. In such cases, the host State investigates and prosecutes the person, but on conviction, he or she is returned to the State of nationality to serve the sentence of imprisonment under appropriate arrangements for the transfer of prisoners.

42. If, on the other hand, the host State's judicial system is not functioning to a satisfactory level and another State has to conduct the trial, it may still be possible for the host State's investigatory authorities to investigate the alleged crime, with or without assistance.

F. No "one size fits all" approach

43. The reality is that the circumstances facing each peacekeeping operation can vary considerably depending on such factors as the mandate given by the Security

[12] In order to avoid any perception of double standards, capacity-building should focus on reviving the host State's legal system to deal with all persons, not just peacekeeping personnel.

[13] This shared jurisdiction may be supported by a treaty or ad hoc arrangements between the States involved.

Council, the resources available, the conditions on the ground and the willingness of the host State to cooperate. Given the wide variations in the circumstances for each peacekeeping mission, there can be no "one size fits all" approach to dealing with serious crimes committed by United Nations peacekeepers and each one of the various configurations set out in paragraphs 29 to 43 above may be an appropriate approach to take in a given set of circumstances.

G. Recommendations

44. **The Group recommends that:**

(a) **Priority be given by the United Nations, where feasible, to facilitating the exercise of jurisdiction by the host State over serious crimes committed by United Nations peacekeeping personnel in accordance with international human rights standards. The exercise of jurisdiction by other States should be complementary; that is, to the extent that the host State does not have the capacity to exercise jurisdiction, the greater the need for other States to exercise jurisdiction, the greater the need for other States to do so;**

(b) **The United Nations consider whether ad hoc arrangements can be made with the host State to ensure respect for the human rights of the alleged offender and therefore to enable criminal proceedings to be undertaken in the host State;**

(c) **In drawing up mandates for United Nations peacekeeping operations, the Department of Peacekeeping Operations and the Security Council should give due consideration to establishing or supporting hybrid tribunals in the host State with specific jurisdiction over, among other things, serious domestic crimes;**

(d) **Where a peacekeeping mission faces financial or other constraints in accommodating all aspects of capacity-building, consideration should be given to focusing, as a minimum, on capacity-building for investigating and adjudicating on serious domestic crimes, in particular serious crimes against the person;**

(e) **There is a need for close coordination among departments, such as the Department of Peacekeeping Operations, the Office of Legal Affairs and the Office of Internal Oversight Services, and the rule-of-law units of the peacekeeping operations in relation to:**

(i) **Deciding on the approach to take for a given case, including in relation to the waiver of immunities;**

(ii) **Developing policies and programmes to build the host State's capacity;**

(iii) **Reviewing the approach previously taken on the waiver of immunity in the light of the progress which the peacekeeping operation has achieved in re-establishing the rule of law in the host State.**

IV. Jurisdiction of States other than the host State

45. International law traditionally recognizes five bases for a State to exercise jurisdiction where a crime is committed outside its territory:

(a) Nationality or active personality: where the State of nationality of the alleged offender is entitled to assert criminal jurisdiction over the conduct of its nationals abroad;

(b) Effects or objective territoriality: where a State may assert jurisdiction over acts done outside its territory, but which have or are intended to have substantial effects within that State;

(c) Passive personality: where jurisdiction is exercised by the State of nationality of the victim of a crime committed by a non-national abroad;[14]

(d) Protective principle: where jurisdiction is asserted on the basis of the impact of the conduct on key interests (especially national security interests) of the State concerned;[15]

(e) Universal jurisdiction: enables a State to claim jurisdiction over persons whose alleged crimes were committed outside the boundaries of that State, regardless of nationality, country of residence, or any other nexus with the prosecuting State. The assertion of jurisdiction to prosecute where the State in question decides not to extradite the alleged offender (the "extradite or prosecute" principle) is related to and is sometimes regarded as a facet of universal jurisdiction.

46. The **nationality or active personality principle** features, in conjunction with other jurisdictional bases, in a number of international treaties.[16]

47. The Group is of the view that all States should establish jurisdiction over serious crimes against the person, in particular those involving sexual exploitation and abuse, committed by their nationals in peacekeeping operations. Action by the State of nationality, where the host State is unable to act, will reduce the risk of impunity. While the establishment of jurisdiction on the basis of nationality does not require a treaty, any treaty on criminal accountability of peacekeeping personnel should include this as a basis of jurisdiction.

48. A jurisdiction similar to that based on nationality is jurisdiction over stateless persons who are habitually resident in the State concerned. Such jurisdiction appears to be capable of being asserted in relation to criminal conduct which is of sufficient concern to the international community to be the subject of regulation by treaty.[17]

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[14] *Oppenheim's International Law*, 9th ed., Sir Robert Jennings and Sir Arthur Watts, eds., Addison Welsley Publishing Company, 1997, vol. I, p. 472.

[15] Ibid., pp. 470 and 471.

[16] See article 6 (1)(b) of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (United Nations, *Treaty Series*, vol. 1035, No. 15410); article 6 (2)(e) of the International Convention Against the Taking of Hostages, (United Nations, *Treaty Series*, vol. 1316, No. 21931); and article 10 (1)(b) of the Convention on the Safety of United Nations and Associated Personnel (United Nations, *Treaty Series*, vol. 2051, No. 35457). A jurisdiction similar to that based on nationality is jurisdiction over stateless persons who are habitually resident in the State concerned.

[17] See article 4 (1)(b)(i) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations, *Treaty Series*, vol. 1582, No. 27627); article 9

49. To avoid any uncertainty, the Group recommends that the establishment of such jurisdiction should be provided for in a treaty as an option for States parties. In practice, very few United Nations peacekeeping personnel are likely to have no nationality.[18]

50. As the present report focuses on serious crimes against the person committed by peacekeeping personnel, the host State is likely to be the only State on whose territory the effects of the crime are felt. The need to provide for extraterritorial jurisdiction by a State other than the host State based on **objective territoriality** is therefore of very limited significance.

51. The victims of serious crimes against the person committed by peacekeeping personnel are usually nationals of the host State. In these cases, the assertion of jurisdiction based on **passive personality** is of limited significance. However, there is the possibility that victims may be foreigners in the host State and therefore it will be helpful if the State of nationality of the victim is also in a position to assert jurisdiction. The general right of a State to assert such jurisdiction is not entirely free from doubt in the absence of a treaty. To avoid this uncertainty, the establishment of such jurisdiction should be provided for in a treaty as an option for States parties.

52. The establishment by States of jurisdiction on the basis of the **protective principle** is of little relevance if the main focus is on serious crimes against the person committed in the host State. These crimes are unlikely to affect key national interests of any State.

53. There are arguments for and against the exercise of **universal jurisdiction** in relation to serious crimes committed by United Nations peacekeeping personnel.

54. An argument against such jurisdiction is that an isolated act of rape, or a serious sexual assault, committed by a peacekeeper is an ordinary crime that does not have the degree of seriousness to justify comparisons with such criminal conduct as crimes against humanity.

55. The counter-argument is that a violent crime, especially one involving sexual exploitation and abuse, committed by a peacekeeper in the context of peacekeeping operations cannot be regarded as merely an ordinary crime. It is a crime committed against a member of the local population, whose safety and security is entrusted to the protection of the peacekeeping operation of which the offender is a member. The gravity of the crime lies in the breach of what is akin to a relationship of trust between the peacekeeper and the members of the community he or she is sent to protect and assist.

56. The criminal conduct in question is also of significant concern to the international community. All States Members of the United Nations have an interest in upholding the credibility of the Organization and its important role in undertaking peacekeeping operations.

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(2)(c) of the International Convention on the Suppression of Acts of Nuclear Terrorism (see General Assembly resolution 59/290, annex); article 15 (2)(b) of the United Nations Convention against Transnational Organized Crime (see General Assembly resolution 55/25, annex I); article 42 (2)(b) of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).

[18] From the information which the Group has received about Secretariat staff in general, persons without nationality constitute less than 0.5 per cent of total staff.

57. Such crimes cannot therefore be regarded as merely ordinary crimes. They do not, on the other hand, necessarily rise to the level of such international crimes as piracy, war crimes or crimes against humanity that attract universal jurisdiction, in the sense of any State being able to assert jurisdiction irrespective of the location of the offender or the crime or the nationality of the persons involved.

58. The Group is of the view that the assertion of universal jurisdiction on the basis of an extradite or prosecute regime underpinned by a treaty strikes an appropriate balance between the considerations in the argument and counter-argument set out above. A State on whose territory an alleged offender is found can extradite him or her to the State of nationality or to another State that has established jurisdiction. But if it does not do so, it must refer the case to its competent authorities for the purposes of prosecution under its domestic laws.

A. Recommendations

59. **The Group recommends that, in addition to the host State,[19] criminal jurisdiction should be established:**

(a) **By the State of nationality of the alleged offender;**

(b) **By the State where the offender is found, if it does not extradite him or her.**

60. **The Group also recommends that jurisdiction may be established:**

(a) **By the State of habitual residence of a stateless offender;**

(b) **By the State of nationality of the victim.**

61. **The Group recommends that, as a minimum, States should establish jurisdiction over serious crimes against the person, including sexual crimes, as they are known and defined in their existing domestic criminal laws, committed by peacekeeping personnel who are their nationals in the host State, provided that the conduct also constitutes a crime under the laws of the host State.** This should be regarded as no more than the bare minimum that is expected of States. States are not precluded from establishing wider jurisdiction as long as this is permitted by international law.

B. Modality for the establishment of jurisdiction by States other than the host State

62. The Group's mandate specifically provided that it make recommendations to the General Assembly on whether an international convention or other means could be used to ensure the accountability of officials of the United Nations and experts undertaking missions for the United Nations who are on assignment with the Organization's peacekeeping operations. **After analysing the advantages and disadvantages of an international convention, the Group recommends that an international convention be adopted.**

[19] The present report does not discuss the establishment of jurisdiction by the State in which the crime occurred as the existence of such jurisdiction is not disputed.

63. An international convention:

(a) Will ensure that the establishment of jurisdiction on the basis of active nationality and the extradite or prosecute regime is an international obligation binding on States parties to the convention and is not left to the discretion of each State;

(b) Underpins the exercise of jurisdiction by the State of habitual residence of a stateless offender and by the State of nationality of the victim;

(c) Can be used to address other issues that facilitate the effective exercise of jurisdiction by States, such as extradition obligations and the use of evidence gathered in the host State;

(d) Creates greater consistency for matters such as the scope of the crimes covered;

(e) Carries a high political signature and provides the opportunity for the international community to convey the importance it attaches to dealing with the problem of serious crimes, in particular those involving sexual exploitation and abuse, committed by peacekeeping personnel, and the fact that these crimes cannot, in view of the circumstances in which they were committed, be regarded merely as ordinary crimes.

64. The disadvantages of an international convention are:

(a) It can take a long time for States to negotiate, adopt and bring into force such an instrument;

(b) As is noted in the Zeid report (A/59/710, para. 89), an international convention only binds States which are parties to the instrument.

65. These disadvantages can, to some extent, be mitigated by the following measures that can be undertaken in parallel with the development of an international convention:

(a) The General Assembly can adopt a resolution calling on member States to establish jurisdiction over crimes committed by their nationals in peacekeeping operations. As a minimum, States should establish jurisdiction over serious crimes against the person, as they are known and defined in their existing domestic criminal laws, committed by their nationals in peacekeeping operations, provided that the conduct also constitutes a crime under the laws of the host State;

(b) The Group understands that for many categories of peacekeeping personnel, the number of persons who are available or made available for consideration by the United Nations often exceeds the number of available posts. Whether the State of nationality of such persons has established jurisdiction over crimes committed by them in the host State could be one of the criteria used in the recruitment of certain categories of personnel (for example, formed police units) for peacekeeping operations;

(c) The inclusion of provisions on criminal accountability in the proposed model memorandums of understanding governing the contribution of military contingents by troop-contributing countries (see A/59/710, para. 79) could be mirrored in similar memorandums of understanding (if any) which govern the

contribution of personnel other than military contingents, for example, formed police units.

66. It could be argued that the Security Council, in the exercise of its powers under Chapter VII of the Charter of the United Nations, could require all States Members of the United Nations to establish jurisdiction over their nationals serving in peacekeeping operations. The competence of the Security Council to do so, however, is likely to be controversial, given that its powers, under Chapter VII of the Charter, are premised upon the existence of any threat to the peace, breach of the peace, or act of aggression and that the measures it takes are for the purposes of maintaining or restoring international peace and security. The link between individual acts of criminal conduct by United Nations peacekeepers and international peace and security is a tenuous one.

C. Draft text of a convention

67. The draft text of an international convention is contained in annex III of the present report. The Group would like to emphasize that this is no more than a preliminary draft for the purposes of illustrating how a convention might look and what issues it could address.

68. While the draft convention sets out obligations on the part of States parties to take measures to investigate, arrest, prosecute and extradite offenders and to render mutual legal assistance, it does not in any way detract from any applicable immunity which either the United Nations or any of its officials and experts on mission enjoy. This is made clear in various parts of the draft text. The purpose of the convention is not to undermine the immunity of the Organization but to create conditions which make it easier for any applicable immunity to be waived, without prejudice to the rights of the alleged offender. The convention also sets out obligations of States parties to protect the rights of victims.

V. Jurisdiction of an international court or tribunal

69. There have been certain situations where the international community has accepted that certain crimes are of such gravity that the only effective way of dealing with them is through the establishment of international courts and tribunals.

70. The Group considers the exercise of jurisdiction over serious crimes committed by peacekeeping personnel by an existing international judicial institution, such as the International Criminal Court, or by a new judicial institution, to be either within or independent of the United Nations.

71. There are, however, difficulties with each of the options:

(a) From a conceptual standpoint, the jurisdiction of international courts and tribunals, such as the International Criminal Court or the international tribunals for the Former Yugoslavia and Rwanda, has, to date, been asserted only over conduct that attracts individual criminal responsibility in international law, including genocide, war crimes and crimes against humanity.[20] Although serious crimes

[20] See, for example, the discussion in the report of the Secretary-General on the establishment of the International Criminal Tribunal for the Former Yugoslavia (S/25704, paras. 33-35).

committed in peacekeeping operations by peacekeeping personnel should not be regarded as merely ordinary crimes, it is unlikely that individual criminal responsibility in international law can be attributed to anything more than a small subset of these crimes;

(b) Such tribunals are highly resource-intensive;

(c) If the work of the tribunals was focused only on crimes committed by peacekeeping personnel, this could create a perception of double standards;

(d) In relation to the exercise of jurisdiction by the International Criminal Court, there are many States which are not party to the Rome Statute of the International Criminal Court[21] and, in the absence of a referral by the Security Council under Chapter VII of the Charter of the United Nations, the Court cannot assert jurisdiction if neither the host State nor the State of nationality is a party to the Statute or has accepted the Court's jurisdiction;[22]

(e) The Court's existing jurisdiction is unlikely to be adequate to deal with all the crimes which need to be addressed. Rape, for example, does not fall within its jurisdiction unless it amounts to a crime against humanity in that it is committed as part of a "widespread or systematic attack directed against any civilian population" as specified in the Court's Statute.[23] It would be necessary to amend the Statute to bring all crimes that may be committed in a peacekeeping context within the Court's jurisdiction. Whether there is sufficient political consensus to do so and whether this is a feasible or effective way to ensure criminal accountability of peacekeeping personnel is doubtful.

72. Another option is the establishment of a new judicial entity with jurisdiction to deal with serious crimes committed by peacekeepers. This can be done by treaty or by a Security Council decision pursuant to Chapter VII of the Charter of the United Nations (as in the case of the international tribunals for the Former Yugoslavia and Rwanda).

73. The difficulties with establishing a judicial institution by treaty are broadly the same as those which apply to the vesting of jurisdiction in the International Criminal Court. Foremost among them is the uncertain level of State participation in the treaty and therefore the jurisdictional situation where neither the host State nor the State of nationality of the alleged offender is a party to the treaty.

74. Some of these difficulties are mitigated if the new judicial entity is established pursuant to a decision of the Security Council under Chapter VII since all States Members of the United Nations are automatically bound by such a decision, including obligations to cooperate with the entity created by the decision.[24]

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[21] From the data the Group has received on the numbers and nationality of United Nations police, military staff officers, military observers, United Nations Volunteers and international civilian staff deployed in peacekeeping operations, only about one half of the 20 States with the highest number of such peacekeeping personnel are States parties to the Rome Statute.

[22] *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A, articles 12 (2) and 13 (b).

[23] Ibid., article 7 (1) and the definition of "attack directed against any civilian population" in article 7 (2) (a).

[24] See *Prosecutor v Blaskjc, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997* (29 October 1997).

75. There are, on the other hand, a number of other difficulties with such an approach. Apart from those which apply to international tribunals in general, there is likely to be uncertainty over the competence of the Security Council, through the use of its powers under Chapter VII, to establish an institution of this character (see para. 66 above), in particular if the judicial entity is established for peacekeeping operations in general, rather than for a specific peacekeeping operation undertaken in response to a specific threat or breach of the peace or act of aggression.[25]

Conclusion

76. The Group concludes that there are conceptual and practical difficulties in establishing or conferring upon international judicial organs jurisdiction to try United Nations peacekeepers for serious crimes committed while serving in peacekeeping operations.

VI. Investigations

77. As stated in the Zeid report (A/59/710, para. 88), one of the problems encountered in holding a person criminally accountable for his or her conduct is the need to be able to gather sufficient evidence for a prosecution under the applicable substantive and procedural law.

A. Investigations by the host State

78. The advantages of the host State exercising jurisdiction are particularly applicable to the conduct of a criminal investigation. The Group therefore recommends that all steps be taken to facilitate an investigation by the host State.[26]

79. In addition, the conduct of the investigation by the relevant authorities of the host State may facilitate the exercise of jurisdiction by States other than the host State as it may enable evidence to be gathered promptly by the host State and transmitted through mutual legal assistance channels to the State undertaking the prosecution. The prompt and effective gathering and preservation of evidence by the host State's investigatory authorities can also facilitate its own conduct of future criminal proceedings when its judicial and other authorities become fully functional.

B. Investigations by States other than the host State

80. If a State other than the host State has jurisdiction to prosecute the alleged offender, its investigatory authorities will need to gather evidence that will be

[25] This controversy was evident in the International Law Commission's consideration of the draft statute for an international criminal court where the establishment of the court by way of resolutions of either the General Assembly or Security Council was discussed, see report of the International Law Commission on the work of its forty-sixty session; *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10* (A/49/10), chap. II, para. 52.

[26] The Group understands that even in States with dysfunctional legal systems, quick impact projects can be undertaken to equip the host State with some basic capacity to carry out investigations, at least in relation to serious crimes against the person.

admissible in criminal proceedings before its courts. This can be problematic for a number of reasons:

(a) The witnesses and the evidence will generally be located in the host State;

(b) In the absence of consent by the host State, the relevant authorities of the State exercising jurisdiction will be unable to exercise investigatory authority in the host State. Even when consent is forthcoming, it may be subject to conditions that will impact on the admissibility of the evidence;

(c) If the authorities of a State other than the host State cannot exercise investigatory powers in the host State, there will usually be a need to rely on formal channels of mutual legal assistance. This may be time-consuming and dependent on the existence of procedures, arrangements or agreements between the States involved.

C. Administrative investigations by the United Nations

81. The United Nations, as the employer of, or organization that has overall management responsibility for, peacekeeping personnel, will conduct administrative investigations as part of its disciplinary process. This administrative investigation is usually in addition to any criminal investigation being conducted by the host State or another State.

82. When the United Nations conducts an administrative investigation, the evidence collected may be used for two purposes. First, the evidence may be used to support the disciplinary process. Second, in cases where the misconduct could also amount to criminal conduct, the evidence may be used to support the commencement or conduct of criminal proceedings.[27]

83. Notwithstanding these two purposes, the conduct of administrative investigations involving officials and experts on mission appeared, until recently, to give little, if any, consideration to the possibility that the evidence obtained might be relevant to a criminal case. The investigations appeared to be conducted solely for administrative purposes in order to establish whether the allegation was "well founded" (see ST/AI/371, para. 3). If impunity is to be avoided, in particular where the host State has no capacity to undertake a criminal investigation, there needs to be recognition that the administrative investigation undertaken by the United Nations may be the only investigation that can trigger or support a criminal process.

D. Recommendations

84. **The need for a thorough and professional investigation is therefore paramount and, in this connection, the Group makes the following observations and recommendations:**

[27] It is important to note that the commencement of criminal proceedings does not mean the immediate commencement of court action solely on the basis of the United Nations administrative investigation. It means the commencement of action by the law enforcement authorities of the relevant prosecuting State triggered by a United Nations report.

(a) Independent and professional administrative investigations into high-risk, complex matters and serious criminal cases (category I cases)[28] are essential to support disciplinary action and, where necessary, to trigger or support criminal processes.[29] In addition, if investigations are carried out by one agency, this reduces inconsistencies in the way in which investigations are conducted;

(b) **The Office of Internal Oversight Services[30] should be informed as soon as possible after there is an allegation of a category I case, including sexual exploitation and abuse.** Early notification, followed by early investigation, is important for the following reasons:

(i) It limits the extent to which evidence is either lost or damaged;

(ii) It enables the Office to assess, with the assistance of the Office of Legal Affairs, whether the alleged misconduct may amount to a crime against the law of the host State or any other State that may have jurisdiction to prosecute. Evidence may then be collected with the requirements of the applicable law in mind;

(iii) It enables the Office to assess the capacity of the authorities of the host State to assist the administrative investigation through the exercise of their enforcement powers;

(c) **Notwithstanding that the Office of Internal Oversight Services will have a role in relation to administrative investigations, whenever it receives an allegation of misconduct where the evidence available at the time indicates that the misconduct might also be a crime, it should give consideration to the allegation being investigated as a crime by the host State. In this regard, the Office should give consideration to referring the complainant to the local authorities at the earliest possible stage;**

(d) While evidence collected by the United Nations when it conducts an administrative investigation may be used to support disciplinary proceedings and the commencement or conduct of criminal processes, the fact that a decision in a disciplinary case is based on a lower standard of proof than a decision in a criminal case does not and should not mean that the investigation is carried out to a lower standard;

(e) **It is important that evidence is collected in the best possible way (for example, using videotaped interviews), that proper chain of custody procedures**

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[28] For the division into category I and category II cases, see the report of the Office of Internal Oversight Services on strengthening the investigation functions in the United Nations (A/58/708, paras. 26 and 27).

[29] The Zeid report recommended that the General Assembly authorize the establishment of a professional capacity to investigate allegations of sexual exploitation and abuse and misconduct of a similar grave nature by peacekeeping personnel (A/59/710, para. 36). The Special Committee on Peacekeeping Operations also recommended "the establishment of a professional and independent investigative capacity, with the necessary expertise, within the administrative authority of the United Nations, bearing in mind General Assembly resolution 59/287 ..." (A/59/19/Rev.1, part two, chap. II, para. 30). That Special Committee recommendation was endorsed by the General Assembly (A/Res/59/300, para. 2).

[30] The General Assembly has recognized that the Office of Internal Oversight Services has the capacity to conduct such investigations and has requested the Secretary-General to establish an administrative mechanism for the mandatory reporting by programme managers of allegations of misconduct to that Office.

are in place and that the Office acquires a capacity to collect and store forensic evidence. The Office should also consider working with other United Nations departments or intergovernmental or non-governmental organizations in the host State to provide appropriate assistance and protection to witnesses and victims. Such protection is particularly important in a State with a dysfunctional legal system;

(f) As the administrative investigation conducted by the United Nations for disciplinary purposes may gather evidence that could be admissible in criminal proceedings, the way in which the United Nations collects the evidence should, as far as is possible when conducting an administrative investigation without executive powers, take into consideration the elements of the crime which need to be established and be consistent with the evidentiary rules of the prosecuting State;

(g) In relation to members of military contingents, the Zeid report recommended (A/59/710, para. 33) that the investigation process should include a military lawyer, preferably a military prosecutor, with expert knowledge of the requirements of the State's military law, to ensure that evidence is gathered in a manner that can be used in subsequent courts martial or national judicial proceedings. Where practicable, a similar arrangement should be implemented in relation to the investigation of other peacekeeping personnel. It needs to be noted, however, that if a representative from the State exercising jurisdiction is in the host State for this purpose, he or she will be there in an advisory capacity and will not, in the absence of the host State's consent, be in a position to exercise any enforcement power;

(h) The role of the Office of Internal Oversight Services in relation to the investigation of all category I cases, including sexual exploitation and abuse, needs to be fully implemented, accepted and understood by all within the Organization.[31] During the course of the Group's work, the Group formed the impression that there was considerable uncertainty among some United Nations officials about how the Office's role interacted with existing administrative practices. The failure to amend administrative guidelines and instructions[32] before the Office assumed its new role has contributed significantly to this uncertainty. These amendments should be undertaken as a priority;

(i) There should be proper coordination among the various units of the United Nations so that an administrative decision, such as removing the alleged offender from the place where the crime occurred, does not compromise investigations and later criminal proceedings. Such decisions, in particular prior to any legal assessment about criminal jurisdiction, can result in impunity when, for instance, the alleged offender is sent back to a country where he or she cannot or will not be prosecuted or extradited;

(j) The Office of Internal Oversight Services must establish clear guidelines for the provision of its report, following the completion of an

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[31] This includes in relationship with separately administered organs and programmes.

[32] For example, the administrative instruction on revised disciplinary measures and procedures (ST/AI/371), the directives for disciplinary matters involving civilian police officers and military observers (DPKO/CPD/DDCPO/2003/001; DPKO/MD/03/00994) and the directives for disciplinary matters involving military members of national contingents (DPKO/MD/03/00993).

investigation, to both the appropriate United Nations unit for the purposes of disciplinary action and to the relevant State for the purposes of criminal proceedings, and for follow-up action by the Office. The Office should consider the need to provide the appropriate United Nations unit and the authorities of the relevant State with as much evidence as possible to support the respective disciplinary and criminal proceedings. In this regard, the confidentiality undertakings that may be given by the Office of Internal Oversight Services must be balanced, inter alia, against the overall interests of the United Nations in being able to sustain disciplinary action; the interests of the victim, the United Nations and the international community in being able to prosecute an offender; and the interest of the complainant in remaining anonymous. If, as recommended earlier, steps are taken to enhance the level of assistance and protection given to victims and witnesses, this should address to some extent the concerns underlying the need for confidentiality.

E. Cooperation between the United Nations and States other than the host State[33]

85. Just as the United Nations needs to ensure that its administrative investigations are, as far as possible, carried out in a manner which facilitates the exercise of criminal jurisdiction, it is also useful if all States take measures to facilitate the effective exercise of criminal jurisdiction when the host State is unable to do so. States may do so by:

(a) Making provisions in their laws to facilitate the admission in criminal proceedings of evidence obtained in the host State by the United Nations during the conduct of its administrative investigation;

(b) Identifying focal points which may provide relevant advice on their national criminal laws and procedures to the Office of Internal Oversight Services in its investigations.

86. States should also inform the United Nations of steps they have taken in investigating and prosecuting crimes committed by peacekeeping personnel.

[33] Some of the following measures may also be applicable to the exercise of jurisdiction by the host State.

Annex I

Composition of the Group of Legal Experts

Secretary

Sinha Basnayake (Sri Lanka)

Members

Enver Daniels (South Africa)
Veronika Milinchuk (Russian Federation)
Jean-Pierre Picca (France)
Suesan Sellick (Australia)
Lionel Yee (Singapore)

Annex II

Terms of reference

Constitution and composition

1. Pursuant to General Assembly resolution 59/300 of 22 June 2005, a group of legal experts shall be established to advise on means to ensure the accountability of United Nations staff and experts on mission in respect of criminal acts committed by them while serving in peacekeeping operations (hereafter the "Group of Experts").

2. The Group of Experts shall be composed of five experts, who together shall have expertise in criminal law, extradition law, mutual assistance in criminal matters law, international human rights law and privileges and immunities of the United Nations.

Mandate

3. To study the issue of the criminal accountability of officials of the United Nations and experts performing missions for the United Nations for criminal acts committed during assignment on peacekeeping operations.

4. To provide advice on the best way to proceed so as to ensure that officials of the United Nations and experts performing missions for the United Nations are held criminally accountable, in accordance with due process, for criminal acts committed at their duty stations and are not unjustly penalized.

5. To make recommendations to the General Assembly on whether an international convention or other means could be used to ensure that officials of the United Nations and experts performing missions for the United Nations who are on assignment with the Organization's peacekeeping operations and who commit defined crimes at their duty stations are held criminally accountable for their actions.

Report

6. The Group of Experts shall submit a report of its findings and recommendations to the Secretary-General, who will submit it to the General Assembly.

Secretariat

7. The Group of Experts shall be assisted by a Secretary and such other staff, as may be necessary.

8. The Group of Experts shall also have at their disposal representatives of the Department of Peacekeeping Operations and the Office of Legal Affairs to ensure that the Group properly takes account of United Nations peacekeeping and legal practice. It shall further have at its disposal representatives of the Human Resources Policy Service of the Office of Human Resources Management to clarify any

matters concerning the Staff Regulation and Staff Rules of the United Nations, as necessary.

Location and time frame

9. The Group of Experts shall be based in New York and shall complete its work within a period of three months.

Annex III

Draft convention on the criminal accountability of United Nations officials and experts on mission

The States parties to this Convention

Recognizing the vital role that United Nations peacekeeping operations play in bringing peace and stability to countries emerging from armed conflict;[1]

Acknowledging that, with few exceptions, the men and women who serve in United Nations peacekeeping operations do so with utmost professionalism and dedication under arduous and often dangerous conditions;[2]

Deeply concerned that the distinguished and honourable record of accomplishment of United Nations peacekeeping operations is being tarnished by unconscionable criminal conduct, in particular sexual exploitation and abuse, committed by a few individual members of those operations;

Concerned that cases of such serious crimes undermine the credibility and the effectiveness of United Nations peacekeeping operations;

Stressing the obligation of members of United Nations peacekeeping operations to respect all local laws and regulations of the host State;[3]

Noting that United Nations officials[4] and experts on mission participating in peacekeeping operations enjoy privileges and immunities set out in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;[5]

Emphasizing that such privileges and immunities are granted in the interests of the United Nations and not for the personal benefit of the individual and that it is the right and duty of the competent organ of the United Nations[6] to waive the immunity of any United Nations official or expert on mission where the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations;[7]

Acknowledging that in the case of crimes committed by United Nations officials and experts on mission participating in peacekeeping operations in the territory of the host State, it may be difficult, notwithstanding the waiver of any applicable immunity,[8] for the alleged offender to be prosecuted by the host State;

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[1] Adapted from the letter dated 24 March 2005 from the Secretary-General to the President of the General Assembly (A/59/710, para. 1).

[2] See A/59/710 and Security Council presidential statement S/PRST/2005/21.

[3] Model status-of-forces agreement. See A/45/594, annex, section VI.

[4] The term "officials" includes United Nations staff and United Nations Volunteers (who are assimilated as staff under the status-of-forces agreements in peacekeeping operations).

[5] See A/45/594, annex, section III.

[6] While the Secretary-General is the person who waives the immunity of all officials and experts on mission, it is the Security Council that waives the immunity of the Secretary-General.

[7] Resolution 22 A (I).

[8] The reference to "applicable" immunity is intended to address the position that many crimes against the person are incapable of being committed as part of official functions and therefore do not attract functional immunity.

Desirous of ensuring that such situations do not lead to impunity for offenders, in particular those who commit crimes of sexual exploitation and abuse;

Have agreed as follows:

Article 1
Definitions

For the purposes of this Convention:

(a) "General Convention" means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;

(b) "United Nations peacekeeping operation" means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control where the operation is for the purpose of maintaining or restoring international peace and security;[9]

(c) "Host State" means a State in whose territory a United Nations peacekeeping operation is conducted;

(d) "United Nations officials and experts on mission" means:

(i) Members[10] of a United Nations peacekeeping operation to whom article V or article VI of the General Convention applies,[11] in whole or in part,[12] pursuant to either the provisions of the status-of-forces agreement entered into by the United Nations and the host State for the peacekeeping operation or,

[9] See article 1(c)(i) of the Convention on the Safety of United Nations and Associated Personnel (United Nations, *Treaty Series*, vol. 2051, No. 35457). The limitation of the draft Convention to crimes committed during peacekeeping operations is a consequence of the terms of reference of the Group of Legal Experts. There is no reason why the provisions of the present draft Convention cannot extend to crimes committed during peacebuilding or other humanitarian operations.

[10] This appears to be the generic term used to describe all personnel covered by the status-of-forces agreements (see model status-of-forces agreements (A/45/594, annex, paras. 2, 4 and 6)).

[11] The Group considered providing more detailed definitions of the two classes of persons based on model status-of-forces agreements (A/45/594, annex, paras. 25-27). There was, however, much uncertainty over the terms used. For example, could there be United Nations Secretariat personnel assigned to the military component of the peacekeeping operation (para. 25) or United Nations "officials" (para. 26) who were not members of the United Nations Secretariat? What was the position of civilians forming part of national military contingents? What would the position be if a decision were to be taken in the future by agreement between the United Nations and sending States to treat United Nations civilian police as being subject to the exclusive jurisdiction of the sending State? What was the position of military staff officers? What if paragraphs 25-28 of the model status-of-forces agreements were altered for a specific peacekeeping operation? The Group decided that it was better not to provide a definition than to have one which carried the risk of omitting certain categories of persons. The Convention should instead apply to any member of the peacekeeping operation who enjoys privileges and immunities.

[12] This is to cover the position of locally recruited members of a peacekeeping operation because only parts of article V of the General Convention apply to them (see model status-of-forces agreements (A/45/594, annex, para. 27)).

pending the conclusion of such an agreement, the provisional application of the model status-of-forces agreement (A/45/594) dated 9 October 1990;[13]

[(ii) Other officials and experts on mission of the United Nations who are present in an official capacity in the area where a United Nations peacekeeping operation is being conducted[14] and who enjoy privileges and immunities of the United Nations pursuant to either articles V or VI of the General Convention, if applicable, or Article 105 of the Charter of the United Nations.[15]][16]

Article 2
Scope of application

1. This Convention applies to United Nations officials and experts on mission.

2. This Convention does not apply to military personnel of national contingents assigned to the military component of a United Nations peacekeeping operation[17] and to other persons who are, under the provisions of the status-of-forces agreement between the United Nations and the host State for the peacekeeping operation, subject to the exclusive jurisdiction of a State other than the host State.[18]

3. This Convention does not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of

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[13] This is the approach endorsed by the General Assembly in resolution 52/12 B and also applied by the Security Council in various resolutions establishing peacekeeping operations, such as resolution 1528 (2004), para. 9, and resolution 1542 (2004), para. 11.

[14] See article 1(a)(i) of the Convention on the Safety of United Nations and Associated Personnel (United Nations, *Treaty Series*, vol. 2051, No. 35457). When on mission, officials and experts of United Nations specialized agencies and the International Atomic Energy Agency, while within the 1994 Convention, are not included within the scope of the present draft Convention since their privileges and immunities are governed by instruments other than the Charter of the United Nations and the General Convention and these are waived by the heads of their respective entities.

[15] There are a number of States that are not party to the General Convention. For these States, the immunities and privileges accorded to United Nations officials and experts on mission will derive from the more general provision of Article 105 of the Charter. The Legal Counsel has expressed the view that the privileges and immunities set out in the General Convention are the minimum privileges and immunities which are to be accorded by Member States in implementing Article 105 of the Charter and that the provisions in the General Convention are so widely accepted as to form part of general international law governing the relations between States and the United Nations (see statement made by the Legal Counsel at the 1016th meeting of the Sixth Committee of the General Assembly on 6 December 1967 (*United Nations Juridical Yearbook*, 1967 (ST/LEG/SER, C/5, pp. 311-314, paras. 9-11) (United Nations publication Sales No. E.69.V.2)).

[16] The position of United Nations officials and experts on mission who are not members of the peacekeeping operation is outside the scope of the Group's terms of reference. Examples of these persons are officials of separately administered United Nations organs and programmes working in the mission area. The Group recommends, however, that consideration be given to including these categories of persons within the scope of the present draft Convention since the local population will not be able to distinguish them as persons not taking part in the peacekeeping operation, and the damage caused to the United Nations from crimes committed by them would be as serious as that caused by crimes committed by peacekeeping personnel. If a decision is taken on their inclusion, this subparagraph can be used to give effect to it.

[17] See A/45/594, para. 27.

[18] This deals with the possibility of exclusive jurisdiction being reserved for the sending State in respect of, for example, formed police units.

the United Nations, in which a United Nations official or expert on mission is engaged as a combatant against organized armed forces and to which the law of international armed conflict applies.[19]

4. This Convention does not affect the immunity from legal process of any person pursuant to the General Convention or to the terms of the status-of-forces agreement between the United Nations and the host State, or the waiver of such immunity by the competent organ of the United Nations.[20]

Article 3
Crimes committed during United Nations peacekeeping operations

1. A United Nations official or an expert on mission commits crime within the meaning of this Convention[21] if that person intentionally engages in conduct which constitutes one of the serious crimes set out in paragraph 2 of the present article while serving on a United Nations peacekeeping operation in a host State.

2. The serious crimes referred to in paragraph 1 of the present article are, for each State party establishing and exercising jurisdiction pursuant to this Convention, those which, under the national law of that State party, correspond to:[22]

(a) Murder;

(b) Wilfully causing serious injury to body or health;

(c) Rape and acts of sexual violence;

(d) Sexual offences involving children;

(e) An attempt to commit any crime set out in subparagraphs (a) to (d); and

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[19] See article 2(2) of the Convention on the Safety of United Nations and Associated Personnel, United Nations, *Treaty Series*, vol. 2051, No. 35457. Criminal liability in these circumstances would be provided for under international humanitarian law, for example, pursuant to the Geneva Conventions.

[20] The normal rules governing the existence of and waiver of immunity therefore continue to apply. The exercise of criminal jurisdiction pursuant to the present draft Convention is conditioned upon such immunity being either non-existent or being waived. The conditions upon which such waiver will or will not be given, including, if applicable, whether the host State's legal system is functioning or meets international human rights standards, is not defined in the Convention but left, as is the current situation, to the judgement and any applicable policies of the United Nations Secretariat. The reference to "competent organ" is because the Secretary-General waives the immunity for all categories of persons, his own immunity, however, is waived by the Security Council.

[21] Adapted from the International Convention for the Suppression of Acts of Nuclear Terrorism (see General Assembly resolution 59/290, annex, article 2).

[22] The formulation is deliberate in that it only requires States parties to extend domestic crimes, as they are defined under national laws, to the peacekeeping situation. This results from the problem of differing understandings across national legal systems about, for example, what constitutes rape or the age of majority for sexual intercourse with minors. The uncertainties arising from differences across national legal systems are mitigated by the notification requirement on implementation measures under article 4(3) of the draft Convention. Each State party therefore has to identify which crimes under its national laws have been given extraterritorial effect when committed in peacekeeping operations.

(f) Participation in any capacity,[23] such as an accomplice, assistant or instigator in any crime set out in subparagraphs (a) to (e).[24]

[Alternate paragraph 2, article 3:

2. The serious crimes referred to in paragraph 1 of the present article, for each State party establishing or exercising jurisdiction pursuant to this Convention, are:

(a) Crimes of intentional violence against the person and sexual offences punishable under the national law of that State party by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty;[25]

(b) An attempt to commit any such crime;[26] and

(c) Participation in any capacity,[27] such as an accomplice, assistant or instigator in any crime set out in subparagraphs (a) and (b).][28]

Article 4
Establishment of jurisdiction

1. Each State party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 3 when:

(a) The crime is committed in the territory of that State; or

(b) The crime is committed by a national of that State.[29]

2. A State party may also establish its jurisdiction over any of the crimes set out in article 3 when:

(a) The crime is committed against a national of that State; or

(b) The crime is committed by a stateless person who has his or her habitual residence in the territory of that State.[30]

3. Upon ratifying, accepting, approving or acceding to this Convention, each State party shall notify the Secretary-General of the United Nations of the measures it has taken with respect to the establishment of jurisdiction under this article.

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[23] The Convention should also apply, for example, to the conduct of senior persons in authority, for example, managers, who destroy evidence.

[24] See article 27(1) of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).

[25] See article 2(1) of the United Nations Model Treaty on Extradition (General Assembly resolution 45/116).

[26] Adapted from the Convention on the Safety of United Nations and Associated Personnel (United Nations, *Treaty Series*, vol. 2051, No. 35457, article 9 (1)(d)).

[27] The Convention should also apply, for example, to the conduct of senior persons in authority, for example, managers, who destroy evidence.

[28] See article 27(1) of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).

[29] See article 9(1) of the International Convention for the Suppression of Acts of Nuclear Terrorism (General Assembly resolution 59/290, annex).

[30] See article 9(2) of the International Convention for the Suppression of Acts of Nuclear Terrorism. A number of other grounds (for example, the offence is committed in an attempt to compel the State asserting jurisdiction to do or abstain from doing any act and the offence is committed on board an aircraft that is operated by the Government of that State) have been omitted because it is not clear that they are applicable to the circumstances covered by the draft Convention.

Should any subsequent change take place, the State party concerned shall immediately notify the Secretary-General of the change.[31]

4. Each State party shall likewise take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 3 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 8 to any of the States parties which have established their jurisdiction in accordance with paragraphs 1 or 2 of the present article.[32]

5. Each State party which establishes jurisdiction under subparagraphs 1(b) and paragraphs 2 or 4 of the present article shall make the crimes set out in article 3 punishable by at least the same penalties which would apply when they are committed in its territory.

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its national law.[33]

Article 5
Conduct which is not a crime under the law of the host State

Subparagraph 1(b) and paragraphs 2 and 4 of article 4 do not impose an obligation on a State party to establish jurisdiction over conduct which does not constitute a crime under the law of the State where the conduct occurred.[34]

Article 6
Investigations and the taking into custody of an alleged offender

1. The present article applies when a State party:

(a) Receives information that a crime set out in article 3 has been committed or is being committed in the territory of that State party by a United Nations official or expert on mission; or

(b) Receives information that a United Nations official or expert on mission who has committed or who is alleged to have committed a crime set out in article 3 may be present in its territory.[35]

2. The State party to which paragraph 1 applies shall:

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[31] See article 9(3) of the International Convention for the Suppression of Acts of Nuclear Terrorism. This notification requirement ensures that the United Nations is apprised of the position with respect to criminal jurisdiction of the State party prior to deployment of persons in a peacekeeping operation. It also helps clarify any uncertainties relating to which offences have been given extraterritorial jurisdiction by the State party pursuant to the Convention.

[32] See article 9(4) of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[33] See article 10(5) of the Convention on the Safety of United Nations and Associated Personnel (United Nations, *Treaty Series*, vol. 2051, No. 35457); see article 9(5) of the International Convention for the Suppression of Acts of Nuclear Terrorism. Thus, the draft Convention does not preclude a State party from asserting jurisdiction beyond that provided for under the draft Convention if permissible by general international law.

[34] This does not, however, preclude a State party from doing so (see article 4, paragraph 6, of the draft Convention).

[35] See article 10(1) of the International Convention for the Suppression of Acts of Nuclear Terrorism (General Assembly resolution 59/290, annex).

(a) Take such measures as may be necessary under its national law to investigate the facts contained in the information;[36] and

(b) Promptly inform other interested States parties and the Secretary-General of the United Nations of its findings and whether it intends to exercise jurisdiction.[37]

3. Upon being satisfied that the circumstances so warrant, the State party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition[38] and shall immediately notify the Secretary-General of the United Nations of the measures it has taken.

4. A United Nations official or expert on mission regarding whom the measures referred to in paragraph 3 of the present article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State; and

(c) To be informed of that person's rights under subparagraphs (a) and (b).[39]

5. The rights referred to in paragraph 4 of the present article shall be exercised in conformity with the national law of the State in the territory of which the offender or alleged offender is present, subject to the provision that the national law of that State must enable full effect to be given to the purposes for which the rights accorded under paragraph 4 of the present article are intended.[40]

Article 7
Prosecution of offenders

The State party in the territory of which the alleged offender is present shall, if it does not extradite that person, be obliged, without exception whatsoever and without undue delay, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a serious nature under the law of that State.[41] The States parties

[36] See article 10(1) of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[37] Adapted from the last sentence of article 10 (6) of the International Convention for the Suppression of Acts of Nuclear Terrorism, but altered to refer to the Secretary-General as well.

[38] See article 10(2) of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[39] See article 10(3) of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[40] See article 10(4) of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[41] Adapted from article 14 of the Convention on the Safety of United Nations and Associated Personnel (United Nations, *Treaty Series*, vol. 2051, No. 35457); and from article 8(1) of the International Convention on the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex).

concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.[42]

Article 8
Extradition of alleged offenders[43]

1. To the extent that the crimes set out in article 3 are not extraditable offences in any extradition treaty existing between States parties, they shall be deemed to be included as extraditable offences in the treaty. States parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded by them.[44]

2. When a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it does not have an extradition treaty, the requested State party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided in the law of the requested State party.[45]

3. States parties which do not make extradition conditional on the existence of a treaty shall recognize the crimes as extraditable offences between themselves, subject to the conditions provided by the law of the requested State party.[46]

4. If necessary, the crimes shall be treated, for the purposes of extradition between States parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States parties which have established their jurisdiction in accordance with article 4.[47]

5. The provisions of all extradition treaties between States parties with regard to the crimes set out in article 3 shall be deemed to be modified as between States parties to the extent that they are incompatible with this Convention.[48]

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[42] See article 44(11) of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).

[43] The intention of article 8 is to make the crimes set out in article 3 extraditable crimes under the normal state-to-state extradition regime regardless of whether there is an extradite or prosecute regime. The Group is aware that a comprehensive treatment of extradition may require consideration of provisions such as article 15 of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and article 44 of the United Nations Convention against Corruption.

[44] See article 15(1) of the Convention on the Safety of United Nations and Associated Personnel. This formulation is preferred to the formulation in article 13(1) of the International Convention for the Suppression of Acts of Nuclear Terrorism. The latter deals with extradition treaties in existence before the entry into force of the Convention and those to be subsequently concluded by States parties. It leaves slightly ambiguous the position of extradition treaties coming into existence between the time when the Convention enters into force and the time when the Convention enters into force for the State party concerned (where this is a different date).

[45] See article 13(2) of the International Convention for the Suppression of Acts of Nuclear Terrorism (General Assembly resolution 59/290, annex).

[46] See article 13(3) of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[47] See article 13(4) of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[48] See article 13(5) of the International Convention for the Suppression of Acts of Nuclear Terrorism, less the reference to "and arrangements" given that the article deals with extradition treaties as a single category of instruments.

Article 9
Conduct which is not a crime under the law of the host State or the State party

Articles 6, 7 and 8 do not impose any obligation on a State party to take measures where the conduct constituting the alleged crime:

(a) Does not constitute a crime under the law of the State where the conduct occurred; or

(b) Would not, if it had taken place in that State party's territory, constitute a crime under its national law.[49]

Article 10
Cooperation[50]

1. States parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the crimes set out in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States parties shall afford one another assistance in accordance with their national law.

Article 11
Transfer of criminal proceedings[51]

States parties shall consider the possibility of transferring to one another proceedings for the prosecution of a crime set out in article 3 in cases where such transfer is considered to be in the interests of the proper administration of justice.

Article 12
Transfer of prisoners[52]

States parties may consider entering into agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for a crime set out in article 3, in order that they may complete their sentences there.

[49] A State party is, however, not precluded from taking such measures if its laws so permit.

[50] See article 14 of the International Convention for the Suppression of Acts of Nuclear Terrorism. The Group is aware that a comprehensive treatment of cooperation may require consideration of provisions such as article 18 of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I), and article 46 of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).

[51] Derived from article 47 of the United Nations Convention against Corruption.

[52] See article 17 of the United Nations Convention against Transnational Organized Crime. This permits the trial to take place in a host State (if this is possible) but sentence to be served in the State of nationality. The transfer of prisoners is, however, not mandatory.

Article 13
Fair treatment

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.[53]

Article 14
Protection from prosecution or punishment on account of race, religion, nationality, ethnic origin or political opinion[54]

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State party has substantial grounds for believing that the request for extradition or mutual legal assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion.

Article 15
Protection of victims and witnesses

1. Each State party shall take appropriate measures in accordance with its national law and within its means to provide effective protection from potential retaliation or intimidation for witnesses who give testimony concerning crimes set out in article 3 and, as appropriate, for their relatives and other persons close to them,[55] without prejudice to the rights of the alleged offender, including the right to due process.[56]

2. The provisions of the present article shall also apply to victims of crimes set out in article 3 insofar as they are witnesses.[57]

3. Each State party shall, subject to its national law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights of the defence.[58]

4. Each State party shall take into account, in applying the provisions of the present article, the age, gender and special needs of victims of offences set out in article 3, in particular the special needs of children.[59]

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[53] See article 12 of the International Convention for the Suppression of Acts of Nuclear Terrorism.
[54] See article 16 of the International Convention for the Suppression of Acts of Nuclear Terrorism.
[55] See article 32(1) of the United Nations Convention against Corruption, less the reference to "experts".
[56] Taken from article 32(2) of the United Nations Convention against Corruption. The list of examples of the measures which can be taken which is found in article 32(2) has been omitted for the time being.
[57] See article 32(4) of the United Nations Convention against Corruption.
[58] See article 32(5) of the United Nations Convention against Corruption.
[59] Adapted from article 6(4) of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex II).

5. Each State party shall ensure that its national law contains measures that offer victims of crimes set out in article 3 the possibility of obtaining compensation for damage suffered.[60]

Article 16
Evidence obtained in the host State

1. Each State party shall, where possible, ensure that there are procedures available under its national law[61] which provide for the use of evidence obtained by the United Nations in host States in proceedings in that State party for the prosecution of crimes set out in article 3, subject to the conditions and requirements specified in that State party's national law.

2. When the United Nations conducts an administrative investigation into alleged misconduct by a United Nations official or expert on mission which may also constitute a crime in respect of which a State party has established jurisdiction under paragraphs 1, 2 or 4 of article 4, it may request that State party to provide relevant advice on the applicable procedures, conditions and requirements under its national law on the admissibility or use of evidence obtained in the host State in proceedings in that State party for the prosecution of crimes set out in article 3. The requested State party shall provide such advice in a timely manner and shall endeavour to provide other forms of assistance as appropriate.[62]

Article 17
Notification of outcome of proceedings

The State party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States parties and to the host State.[63]

Article 18
United Nations privileges and immunities

Nothing in this Convention confers any right or imposes any obligation on a State party to take any measure which is inconsistent with any immunity of a United Nations official or expert on mission unless the competent organ of the United Nations[64] has waived such immunity, either generally or in relation to specific measures to be taken by that State party.[65] Where immunity exists in relation to

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[60] See article 6(6) of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex II).

[61] Language for ensuring the availability of domestic procedures derived from the Rome Statute of the International Criminal Court. See *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

[62] This may take the form of the equivalent of national investigation officers sent to assist United Nations officials in the peacekeeping operation.

[63] See article 19 of the International Convention for the Suppression of Acts of Nuclear Terrorism (General Assembly resolution 59/290, annex), with the addition of the host State (because the information should be disseminated to the affected community).

[64] The Secretary-General waives immunity of officials and experts on mission. The Secretary-General's own immunity is waived by the Security Council (see article V, section 20 and article VI, section 23 of the General Convention).

[65] The text is broadly drafted because a different immunity regime exists for different measures. In the case of experts on mission, for example, they enjoy functional immunity in relation to legal

specific measures to be taken by that State party, the State party shall, where appropriate, seek a waiver of such immunity from the competent organ of the United Nations.

Article 19
Right of self-defence

Nothing in this Convention shall be construed as derogating from the right to act in self-defence.[66]

[Article 20
Sovereign equality, territorial integrity and non-intervention in domestic affairs

States parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.][67]

Article 21
Exercise of jurisdiction in the territory of another State party

Nothing in this Convention entitles a State party to undertake in the territory of another State party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State party by its national law.[68]

Article 22
Settlement of disputes[69]

Article 23
Signature, ratification, acceptance, approval and accession[70]

Article 25
Denunciation[71]

Article 26
Original texts[72]

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process (section 22 (b) of the General Convention) but full immunity from arrest, detention and seizure of personal baggage (section 22 (a)).

[66] See article 21 of the Convention on the Safety of United Nations and Associated Personnel (United Nations, *Treaty Series*, vol. 2051, No. 35457). This may be required if the conduct would otherwise amount to a serious crime such as unlawful killing or assault but is carried out in the course of official duties.

[67] See article 21 of the International Convention for the Suppression of Acts of Nuclear Terrorism. Although this paragraph appears in other conventions, its applicability to this Convention needs to be considered.

[68] See article 22 of the International Convention for the Suppression of Acts of Nuclear Terrorism. This presumably refers to activities such as the exercise of police powers.

[69] See article 23 of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[70] See article 24 of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[71] See article 27 of the International Convention for the Suppression of Acts of Nuclear Terrorism.

[72] See article 28 of the International Convention for the Suppression of Acts of Nuclear Terrorism.